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OFFICE OF PETITIONS

In re Application of :
Alexandrov et al. : DECISION ON PETITION
Application No.09/940,256 :
Filed: August 24, 2001 :
Attorney Docket No. 2750-1483P:

This is a decision on the REQUEST TO CORRECT THE USPTO RECORDS WITH RESPECT TO THE FILING DATE, filed August 8, 2007, which is properly considered as a petition under § 1.53(e)(2). Petitioners request that the above-identified application be accorded a filing date of August 24, 2001, rather than the presently accorded filing date of August 27, 2001.

Applicants maintain that the application was deposited on August 24, 2001 and is entitled to a filing date of August 24, 2001. To show receipt of the application parts on August 24, 2001, applicants point to the original filing receipt mailed November 29, 2001 showing a filing date of August 24, 2001. In addition, applicants supply a copy of their itemized and date-stamped return postcard.

Preliminarily, it is noted that the instant petition was filed almost 5 years after the filing of the application. Petitioner is advised that petitions under 1.53(e)(2) filed more than 2 months after the action complained of may be dismissed as untimely filed without consideration on the merits. See 37 CFR 1.181(f). Under the circumstances of this case, discretion will be exercised in the favor of applicants and the petition will be considered on the merit. In this instance, the application, including the basic filing fee, was received in the Office. Thereafter, on November 29, 2001, a Notice to File Missing Parts of Application was mailed. Applicants responded with the filing of an extension of time for response within the fifth month. No

further response was received and the application became abandoned. It does not appear from the PALM record of this application that any continuation application was filed.

Consideration now turns to the merits of the petition. A postcard receipt, which itemizes and properly identifies the items, which are being filed, serves as prima facie evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioners' postcard receipt reveals that: 1) it was date stamped as received in the USPTO on August 24, 2001, and the items filed therewith were assigned Application No. 09/940,256; 2) it specifically identifies the items being filed and 3) it lacks any annotation of non-receipt of any item denoted on the postcard. Thus, petitioners have shown that the items denoted, were filed on August 24, 2001.

As evidenced by the contents of the application file¹, the return postcard, the filing receipt and Notice to File Missing Parts of Application both mailed November 29, 2001, the application papers as identified on the postcard were deposited on August 24, 2001, and those papers were entitled to a filing date. A review of the record further confirms that no papers were filed in this application subsequent to August 24, 2001, warranting a change in the filing date. Thus, the application is entitled to a filing date of August 24, 2001.

Accordingly, the petition is GRANTED.

Given the basis for granting the petition, the petition fee is subject to refund. Accordingly, although authorized, no fee will be charged.

The application file is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- correction of the filing date to August 24, 2001 using the application papers received in the Office and presently accorded a filing date of August 27, 2001. Thereafter, the application will be returned to Files Repository for storage as an abandoned case.

¹ The papers that constitute the original application disclosure bear the August 24, 2001 date with the assignment of application number label and in all respects support a conclusion that entry of a filing date of August 27, 2001 was in error.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, sweeping flourish extending from the end of the name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions